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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term 1980

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**No. 80-6206**

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FREDDIE F. LEE, Appellant

v.

BOARD OF OVERSEERS OF THE BAR, Appellee

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*ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE*

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## MOTION OF APPELLEE BOARD OF OVERSEERS OF THE BAR TO DISMISS OR AFFIRM

Robert F. Preti, Esq.
443 Congress Street
Portland, Maine 04101

Counsel for Appellee

DATE: March 12, 1981

IN THE

# SUPREME COURT OF THE UNITED STATES

October Term 1980

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**No. 80-6206**

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FREDDIE F. LEE, Appellant

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*ON APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE*

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## MOTION OF APPELLEE BOARD OF OVERSEERS OF THE BAR TO DISMISS OR AFFIRM

The Appellee-Board of Overseers of the Bar respectfully moves to dismiss the Appellants appeal or affirm the judgement of the Supreme Judicial Court of Maine which appears as Board of Overseers of the Bar v. Lee, Me., 422 A. 2d 998.

The decision of Board v. Lee adequately sets out the facts upon which both the appeal and this motion are presented.

## QUESTIONS PRESENTED

1. Whether a suspension by the Maine Supreme Judicial Court of the Appellant's Maine License to practice law for his failure to pay the annual registration fee pursuant to Maine Bar Rule 10, violates the Appellant's Constitutional guarantees of due process and equal protection.

## MOTION TO DISMISS

The Judgement Below Does Not Raise A Substantial Federal Question And Rests On An Adequate Non-Federal Basis.

In its decision, the Maine Supreme Judicial Court noted that while the doctrine of seperation of powers is implicit in the Federal Constitution, it is explicit in the Maine State Constitution. Thus, the Maine Supreme Judicial Court determined that it had the inherent power to supervise attorneys as a specific outflow of its own State Constitution, and that as a prerequisite to receipt of a license to practice before the Court of this State a registration fee may be reasonably required to enable the Court to carry out its responsibility. The Appellant has not raised any federal challenge to the validity of the Maine Constitution. He has merely argued that the assessment of a registration fee constitutes a tax, which, pursuant to the Maine Constitution, can only be imposed by the Maine Legislature. The U.S. Supreme Court has previously rejected a similar challenge to the Deleware Supreme Court for want of a substantial federal question when the Delaware Court established its right to assess lawyer fees for a mandatory Client Security Fund established under the inherent power of the Courts to regulate attorneys. In re Reed, 396 U.S. 274 (1970).

The Appellant argues that the Maine Supreme Judicial Court is really "taxing" lawyers under the taxing provision of the Maine Constitution, not assessing them pursuant to the Court's inherent responsibility to supervise the practice of law. The foundation of the Appellant's argument rests on his disagreement with that part of the Board v. Lee decision which states:

> "Maine Bar Rule 10 is not a bill for imposing a tax or raising a revenue." Board v. Lee supra, page 11.

The Appellant does not challenge the validity of any portion of the Maine Constitution but claims that the Maine Supreme Judicial Court has misread or misinterpreted the Maine Constitution and insists that his suspension for failure to pay a "tax", which should normally be levied by the State Legislature,

denies him equal protection and due process. The Maine Supreme Court found ample case precedent to reject the Appellant's contention that the assessment was really a tax and concluded:

> "This appeal presents an issue which is resolved by thus defining the distinction between a tax and a license fee. We see no reason for using any other definition in the case at bar."

The decision that the assessment is not a tax involved no interpretation of federal law and the Appellant does not claim that any provision under which the definitions of assessment and tax were reached violated either the U.S. Constitution or federal law. Thus, the Appellant's claim that the Maine Supreme Judicial Court's decision did not properly construe the Maine Constitution does not raise a substantial federal question.

## MOTION TO AFFIRM

The Question The Appellant Has Presented is Unsubstantial And Has Been So Foreclosed By Prior Decision Of This Court As Not To Need Further Argument.

The Board of Overseers of the Bar is a Court created agency authorized to collect Court assessed registration fees and to investigate and prosecute allegations of misconduct of attorneys. The Maine Supreme Court has found authority for this structure in its inherent powers as a separate branch of government stemming from the Maine Constitution. Any legal basis for an attack on such a mechanism under the U.S. Constitution has been previously foreclosed by this Court.

This Court has long held that the State Supreme Courts have the inherent authority to discipline their officers;

> "And it has been well settled, by the rules and practice of common law courts, that it rest exclusively with the court to determine who is qualified to become one of its officers, as

attorney and counsellor, and for what cause he ought to be removed." Ex Parte Secombe 60 U.S. 9, 13 (1856).

"It is laid down in all the books in which the subject is treated, that a court has the power to exercise a summary jurisdiction over its attorneys to compel them to act honestly towards their clients, and to punish them by fine and imprisionment for misconduct and other contempts, and, in gross cases of misconduct, to strike their names from the role." Ex Parte Wall 107 U.S. 265, 273 (1882).

"In Bushbacker v. Supreme Court of Ohio, No. C-2-75-743, 75-751, 76-309 (S.D. Ohio 1976), aff'd sub nom, Cuyahoga County Bar Ass'n. et al. v. United States Supreme Court of Ohio, 430 U.S. 901 (1977), the United States Supreme Court upheld the constitutionality of a rule of the Ohio court which required practicing attorneys to register and pay a biennial fee in the face of charges of violation of procedural due process, substantive due process and equal protection of laws.

In Tennessee a court rule providing for annual registration of attorneys and payment by them of an annual license fee has withstood a challenge on grounds of denial of the constitutional guarantees of due process and equal protection. Ables v. Fones, 587 F.2d 850 (6th Cir, 1978)." Board v. Lee Supra, pg. 13.

The ability of a State Supreme Court to discipline its officers and to assess them for that purpose has remained unquestioned whenever a state or federal court has been confronted with the issue. The Appellant cites no precedent for his position. He merely relies on his instinct that these assessments are somehow a tax and as a tax must be imposed by the State Legislature, not the Court. The Appellant was accorded both notice and opportunity to be heard on this issue. He argues in his jurisdictional statement that the previous Federal and U.S. Supreme Court decisions on this question, for one reason or another, did not pass "on any Constitutional question". He further argues that while assessments may be made against attorneys

for "financing other Unified Bar activities" (see Appellant's jurisdictional statement, page 6) it cannot be used for merely "policing the legal profession". He is in effect saying that while courts may impose fees for bar related activities, this does not necessarily allow them to impose fees for a court's primary responsibility, that of policing the profession. This argument is contrary to the wealth of case precedent.

## CONCLUSION

For the reasons stated herein, this appeal should be either dismissed or the judgement below affirmed.

Respectfully submitted

Robert F. Preti, Esq.
443 Congress Street
Portland, Maine 04101

Counsel for Appellee

No. 80-6206

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## CERTIFICATE OF SERVICE

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I, Robert F. Preti, attorney for the Board of Overseers of the Bar, appellee herein, do hereby certify that a true and accurate copy of this Motion has been served on all parties required to be served, and in particular on Freddie F. Lee, by placing said copy in the United States Mail, postage prepaid, addressed to Freddie F. Lee, Route 107 (Sebago), East Baldwin, Maine 04024, on the 13 day of March, 1981.

Robert F Preti

ROBERT F. PRETI
443 Congress Street
Portland, Maine 04101
Counsel for Appellee

Subscribed and Sworn before me this 13 day of March, 1981.

Michael E Bam

Notary Public